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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FEB 16 1994

IN THE APPLICATIONS OF:

MM DOCKET NO. 93-75

TRINITY BROADCASTING OF FLORIDA, INC.
and
GLENDALE BROADCASTING COMPANY
Miami, Florida

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TRINITY BROADCASTING OF FLORIDA, INC.)
and)
GLENDALE BROADCASTING COMPANY)

MM DOCKET NO. 93-75

Miami, Florida)
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The above-entitled matter came on for hearing pursuant to
Notice before Judge Joseph Chachkin, Administrative Law Judge,
at 2000 L Street, N.W., Washington, D.C., in Courtroom 3, on
Tuesday, January 25, 1994, at 9:00 a.m.

APPEARANCES:

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I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Lee Sandifer				
By Mr. Emmons	4962			
By Mr. Shook		5113		

E X H I B I T S

<u>Glendale</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
Exhibit No. 222	5106	5106	
Exhibit No. 223	5107	5107	

Hearing Began: 9:00 a.m.

Hearing Ended: 4:00 p.m.

Lunch Break Began: 12:29 p.m.

Lunch Break Ended: 1:30 p.m.

P R O C E E D I N G S

JUDGE CHACHKIN: On the record. Mr. Cohen, is this your next witness?

MR. COHEN: Yes. You're dealing with the first team, Mr. Schauble, Your Honor.

JUDGE CHACHKIN: Mr. Schauble. Would you please rise, sir?
Whereupon,

LEE SANDIFER

having first been duly sworn, was called as a witness herein and was examined and testified as follows:

MR. SCHAUBLE: Your Honor, I do have one preliminary matter and that's --

JUDGE CHACHKIN: Go ahead.

MR. SCHAUBLE: -- concerning Glendale Exhibit 221.

JUDGE CHACHKIN: Yes.

MR. SCHAUBLE: Which we discussed at the end of the day yesterday. We reviewed the original of the document and the document is not addressed to any specific person. However, I believe Mr. Sandifer and George Gardner are obviously available and be asked questions about their knowledge of the document.

JUDGE CHACHKIN: All right. Mr. Emmons.

MR. EMMONS: Thank you, Your Honor.

DIRECT EXAMINATION

1 BY MR. EMMONS:

2 Q Mr. Sandifer, for the record, please, would you
3 first state your full name and your residential address?

4 A Lee Herbert Sandifer, 816 Nesbitt Drive, Carlisle,
5 Pennsylvania.

6 Q Now, have you read any of the deposition testimony
7 given in this proceeding by either George Gardner or Harold
8 Etsell or David Gardner?

9 A I have not read their depositions.

10 Q Have you discussed with any of those persons the
11 substance of their deposition testimony?

12 A I have not.

13 Q Have you discussed with any other person, including
14 counsel, the substance of the deposition testimony given by
15 either George Gardner or Harold Etsell or David Gardner?

16 A I've had discussions with Mr. Schauble and Mr. Cohen
17 regarding their testimony.

18 Q Regarding the testimony of --

19 A Excuse me. Their depositions.

20 Q The depositions of the three people I mentioned?

21 A Yes.

22 Q And when did you have such discussions with
23 Mr. Schauble and Mr. Cohen?

24 A Mr. Schauble came to Carlisle in mid-December 1993
25 for a meeting to discuss the exhibits in this matter. And at

1 that time, we discussed the -- a summary he had prepared of,
2 of the depositions.

3 Q All right. And did that summary include a summary
4 of your own deposition?

5 A Yes, it did.

6 Q As well as the deposition of the three other persons
7 I've mentioned?

8 A Yes, it did.

9 Q Now, who, who else attended that meeting you just
10 described?

11 A The meeting in December was attended by George
12 Gardner, David Gardner, and myself, along with John Schauble.

13 Q And at that meeting, was there also discussion of
14 the substance of your deposition testimony?

15 A Yes.

16 Q Now, have you read the -- what we call the direct
17 written testimony that has been filed in this proceeding by
18 either George Gardner or David Gardner?

19 A Yes.

20 Q And when did you read that?

21 A I read it in preparing for the meeting with
22 Mr. Schauble in December.

23 Q Now, was that the only meeting that, that you have
24 had with counsel to prepare for your appearance at this
25 hearing here this morning?

1 A No.

2 Q How many other such meetings were there?

3 A Three.

4 Q Was the December meeting that you described a moment
5 ago, was that the first of the meetings?

6 A Yes.

7 Q And so you've had three additional meetings since,
8 since that December meeting?

9 A Yes.

10 Q At any of the three additional meetings were either
11 Mr. David Gardner or Mr. George Gardner present?

12 A Mr. David Gardner was present at a meeting that
13 Mr. Schauble and David Gardner and I had in Carlisle in early
14 January of this year.

15 Q And was George Gardner present at that meeting?

16 A He was not.

17 Q Was either George Gardner or David Gardner present
18 at any of the other two meetings?

19 A No.

20 Q That was just between you and counsel, the other two
21 were?

22 A Yes.

23 Q Now, at the meeting in which David Gardner and you
24 were present with counsel, was there a discussion at that
25 meeting of the substance of any of the deposition testimony

1 given in this proceeding?

2 A There was not a specific discussion of, of
3 deposition testimony.

4 Q Was there a discussion of the direct written
5 testimony filed by George Gardner or David Gardner?

6 A Not in my presence there wasn't.

7 Q Now, Mr. Sandifer, when did you become associated
8 with Raystay Company?

9 A I started my employment with the group of companies
10 in June of 1990.

11 Q And when you say the group of companies, you're
12 referring to what?

13 A I'm referring to companies that are owned or managed
14 by George Gardner that include the Raystay Company and its
15 cable operations; the Waymaker Company, which is a management
16 company owned by George Gardner that manages cable properties
17 and other properties; and the GH Cable Properties, which there
18 are several entities of cable properties in Mississippi and
19 Arizona.

20 Q And you mentioned Waymaker as one of those, and I
21 take it Waymaker is a company that provides management
22 services to both Raystay and to GH Cable?

23 A Yes, it is.

24 Q Does Waymaker provide management services to any
25 company other than the George Gardner company?

1 A Yes.

2 Q What other company -- What, what non-George Gardner
3 company or companies does Waymaker provide services to?

4 MR. SCHAUBLE: Objection. Relevance, Your Honor.

5 JUDGE CHACHKIN: Sustained.

6 BY MR. EMMONS:

7 Q Is, is the bulk of Waymaker's activity on behalf of
8 Raystay or GH Cable?

9 MR. SCHAUBLE: Objection. Relevance.

10 JUDGE CHACHKIN: Sustained.

11 BY MR. EMMONS:

12 Q Mr. Sandifer, what is your -- And prior to joining
13 Raystay in June of 1990, what was your general background and
14 experience?

15 A I have a master's degree in business from Austin,
16 Texas, University of Texas in 1974. And since that time, I've
17 been in -- spent a couple years in public accounting. I'm a
18 certified public accountant and I've maintained about seven or
19 eight years of cable experience and about six-plus years of
20 real estate development and management experience, all in the
21 accounting end of financial management areas.

22 Q And were you for a period of time employed at, at a
23 public accounting firm?

24 A Yes, I was.

25 Q For about how long?

1 A Three years.

2 Q Now, when you were hired at Raystay, to what
3 position were you hired to fill?

4 A I was hired as the chief financial officer, and I'm
5 employed by the Waymaker Company. And we provide services to
6 Raystay.

7 Q But you, you hold a -- Your, your title of chief
8 financial officer is a title that pertains to Raystay?

9 A I'm -- Yes.

10 Q And did there come a time when you became vice
11 president of Raystay?

12 A Yes.

13 Q When was that?

14 A Early 1991, I believe.

15 Q And have you been a vice president of Raystay from
16 that time to the present?

17 A Yes.

18 Q Now, as vice president and chief financial officer
19 of Raystay, are you the second ranking person in the company?

20 A Well, I report to George Gardner who's in charge of
21 the company, so, you know, I, I'm at the next level of
22 management down. But there have been times when other people
23 in that level that are collateral with my position.

24 Q Now, what have been the main areas of Raystay's
25 business since you joined the company?

1 A Raystay's primary business has been the ownership
2 and operation of cable systems in Central Pennsylvania and
3 West Virginia, with -- And Raystay has ownership interest in
4 the GH Cable Properties in Mississippi and Arizona, as well as
5 Raystay operates TV-40, a low-power television station in
6 Dillsburg.

7 Q Would you say the, the cable business is, is
8 Raystay's predominant area of business?

9 A Yes.

10 Q Now, what have been your general duties and
11 responsibilities at Raystay since you came to the company?

12 A Well, they've changed. Is there any particular
13 period?

14 Q Well, you might take it from the start. You joined
15 in June of 1990 and I think you testified that at that point
16 you assumed the position of chief financial officer. What
17 were your primary responsibilities when you started? And then
18 if they changed, if you could generally describe how they
19 changed.

20 A When I started in June of 1990, I would say that my
21 position was primarily towards -- directed to their accounting
22 and financial operations of the companies, the group of
23 companies. And at times, those included direction of the
24 purchasing, and that probably started in the fall of 1990,
25 into some time in '92. I've been responsible for supervising

1 the accounting group throughout my, my term of employment. I
2 have -- I started supervising David Gardner, the contract
3 management area, in late summer or fall of 1990.

4 And I've had other operational responsibilities at
5 different times and I've been in charge of TV-40 operations
6 since August of 1991 through essentially the fall of 1993.

7 Q Have, have your duties included, from time to time,
8 negotiating contracts?

9 A The -- Yes.

10 Q And have you, from time to time, been involved in
11 business development activities on behalf of the company?

12 A Yes.

13 Q Now, you, you testified I think that you report to
14 George Gardner, and, and I, I, I take it what you mean in
15 that, that is in a corporate reporting sense you report to
16 George Gardner. Is that correct?

17 A Yes.

18 Q Has that been true ever since you joined the company
19 in June of 1990?

20 A Yes.

21 Q Have you ever reported to anyone other than George
22 Gardner since you joined Raystay?

23 A No.

24 Q Do you, do you communicate -- Well, strike that.
25 How frequently would you say, in general, you communicate with

1 George Gardner on business matters?

2 A It would depend upon the time of -- that we might be
3 talking about. George Gardner and I communicate on an
4 occasional basis, I would say an as-needed basis when there is
5 a project or a matter that requires our joint attention. His
6 office is right down the hall from mine and I, I see him when
7 he's in the office.

8 Q From your observation over the years since you've
9 been there, what, about three-and-a-half years now, would you
10 say that George Gardner is, is active in the direction of the
11 general business of Raystay?

12 A Yes.

13 Q Would you say that George Gardner likes to be
14 informed of what's going on in the business?

15 A Yes.

16 Q Does, does George Gardner like to have written memos
17 as a basis for oral discussions concerning company projects?

18 A In general, he does, yes.

19 Q Now, you testified I think that you supervise David
20 Gardner. Is that correct?

21 A Yes.

22 Q And is it correct if I understand you to say that
23 that has been the case since the fall of 1990?

24 A Yes.

25 Q So, I take it then that, that David Gardner reports

1 to you? That's his reporting line?

2 A Yes.

3 Q And who, who decided that arrangement? In other
4 words, who decided that, that you would supervise David
5 Gardner and that David Gardner would report to you?

6 A George Gardner.

7 Q And do you have an understanding as to whom David
8 Gardner reported directly to prior to the implementation of
9 the arrangement you just described?

10 A I think he's had a variety of reporting
11 responsibilities over his long employment there, but,
12 generally, I would say he reported to George Gardner
13 immediately prior to reporting to me.

14 Q Now, what have been David Gardner's main job
15 responsibilities since you began supervising him?

16 A His primary job responsibilities has to do in the
17 area of contract administration-negotiation, contract
18 management, and I guess compliance with various federal and
19 state guidelines that have to do with the company.

20 Q Has he had at any time responsibilities regarding
21 the operation of TV-40?

22 A During my employment, he has not been directly
23 involved in the management of TV-40. He prepared agreements
24 that have to do with TV-40 and is aware of operational
25 activities there.

1 Q Does he have any responsibilities relating to the
2 Federal Communications Commission?

3 A He has responsibilities relating to the company's
4 involvement in response to the FCC on various cable and
5 communication reporting requirements.

6 Q You mentioned a minute ago I think that he -- when
7 you were describing generally his responsibilities that he had
8 responsibility for -- I think you used the term "federal and
9 state guidelines," if I remember correctly. By that answer,
10 were you -- did you have in mind including FCC rules and
11 regulations?

12 A Yes.

13 Q Now, specifically with respect to FCC, what specific
14 duties has David Gardner had since -- And all this, of course,
15 is referring to the time period since you began supervising
16 him.

17 A He's had involvement in, I guess, responsibilities
18 for overseeing EEO reporting within the company. He had
19 responsibilities and involvement in dealing with our
20 engineering staff and FCC counsel on various permits, cars'
21 licenses, other things that have to do with the operation of
22 our cable systems. And he's had responsibilities involving
23 the reporting on TV-40 and the construction permits, as well
24 as some things that have to do with other matters that we're
25 involved in.

1 Q Is, is David Gardner the company's primary contact
2 with FCC counsel for purposes of FCC filings?

3 A Of the non-engineering CLI type filings, I'll say
4 the answer is yes.

5 Q You say CLI. What do those -- does that stand for?

6 A Signal Leakage, engineering requirements of, of, of
7 other cable operations.

8 Q I see. So apart from that, you're saying he is the
9 person who is the primary contact with FCC counsel?

10 A Apart from engineering-related reporting, he is the
11 primary person in contact with FCC counsel, except for matters
12 dealing with the Cable Act since fall of 1992, where he has
13 some involvement but is not the primary person.

14 Q Now, when did you first become aware that the FCC
15 had issued construction permits to Raystay for low-power
16 television stations in Lebanon and Lancaster and Red Lion,
17 Pennsylvania?

18 A I think the earliest that I became aware of it was
19 in early 1991 in conversations with Mr. Etsell.

20 Q That's Harold Etsell?

21 A Harold Etsell.

22 Q And what did you -- Strike that. Did, did you
23 understand that Mr. Etsell at that time had the responsibility
24 for developing a business plan for the low-power construction
25 permits?

1 A If you could restate the question, please.

2 Q Well, I'm taking you back to the time when you first
3 learned that, that the FCC had granted or issues five
4 construction permits for low-power stations to, to Raystay,
5 and you testified that you believe that was in early 1991.
6 And so my question is that at that time, when you learned that
7 -- And you say you learned it from Mr. Etsell. And my
8 question is when you, when you learned it from Mr. Etsell, did
9 you, did you have an understanding or did -- was it your
10 understanding when you heard about it that Mr. Etsell was the
11 person at Raystay who had responsibility for developing a
12 business plan for these construction permits?

13 A I became aware of the permits in a discussion with
14 Mr. Etsell and our investment banker, Communications Equity
15 Associates, in which Mr. Etsell outlined a business plan. But
16 I don't know whether he was the primary person responsible for
17 that development. He was the chief operating officer of the
18 company at the time.

19 Q Of Raystay?

20 A Of, of Raystay.

21 Q Okay. In Volume III-C of the blue volumes on your
22 desk there there is an Exhibit 209. It's the first exhibit of
23 that volume. You might take a look at that.

24 A Yes, sir.

25 Q This is a memorandum dated January 15, 1991, to a

1 man named Brian Sweeney from Harold Etsell, and it shows
2 copies to George Gardner and to yourself. Do you see that?

3 A Yes.

4 Q Do you recall seeing a copy or receiving a copy of
5 this memorandum about the time January 15, 1991?

6 A Yes.

7 Q Now, you mentioned a moment ago I think that you
8 learned about the low-power construction permits in a, a
9 conversation or discussion with -- that you were having with
10 Mr. Etsell and the company's investment banker. I believe
11 that's the term you used. Could you tell us who Brian Sweeney
12 is or was?

13 A Brian Sweeney is a -- I guess you'd say a broker or
14 investment banker at Communications Equity Associates. And at
15 the time, he was working at the Philadelphia area office of
16 CEA.

17 Q And Community Equity Associates, or CEA as you
18 called it, that was a, an investment banker retained by
19 Raystay?

20 A It's, it's Communications Equity Associates.

21 Q I'm sorry.

22 A Yes.

23 Q Let's call it CEA from now on.

24 A Okay, CEA. Raystay retained CEA in the fall of 1990
25 to assist it in obtaining refinancing of the Raystay company

1 and providing some additional debt financing.

2 Q Now, this memorandum of, of -- TBF Exhibit 209
3 appears to be, and tell me if I'm correct, a description by
4 Mr. Etsell, the author, to Mr. Sweeney of Raystay's low-power
5 television operation, generally. And do you see at the top of
6 page 2 of the memorandum, in the first paragraph, that there
7 is a reference there to five new low-power stations that are
8 part of Mr. Etsell's discussion? Do you see that?

9 A Yes.

10 Q And was this about the first time that you, you
11 learned of the existence of, of the five low-power
12 construction permits for Lebanon, Lancaster, and Red Lion?

13 A Yes.

14 Q Okay.

15 A About the time.

16 Q Okay. Now, you, you testified that you were not
17 aware at that time -- And again, I guess we're talking about
18 January of '91 or mid-January of '91 -- that you were not
19 aware at that time that Harold Etsell had responsibility to
20 develop a business plan for these low-power permits. My
21 question to you is did there ever come a time later when you
22 learned that Mr. Etsell had that responsibility?

23 A Yes.

24 Q When was that?

25 A Shortly after this in discussions with George

1 Gardner and, and Hal Etsell. Hal Etsell was given freedom to
2 explore this concept or plan.

3 Q When you refer to this concept or plan, you're
4 referring to what?

5 A Mr. Etsell has outlined more than once to me a
6 regional network of alternate, alternate programming,
7 primarily for cable systems.

8 Q Would, would you turn to TBF Exhibit 210, which is
9 the next document in that volume? Do you have that before
10 you?

11 A Yes, I do.

12 Q Now, is that -- This is a document titled "Low-Power
13 TV Business Plan" dated February 12, 1991. Is that the plan
14 that you were referring to a moment ago in your testimony?

15 A Yes.

16 Q Now, when was the first time you saw this document?

17 A I believe I saw it in about the time it was
18 prepared, in a fax from Mr. Etsell.

19 Q Do you remember being asked at your deposition when
20 you first saw what is now TBF Exhibit 210?

21 A Would you restate the question, please?

22 Q The question was you remember that we took your
23 deposition in this proceeding in October 1993?

24 A Yes.

25 Q Do you remember being asked at the deposition when

1 was the first time you saw the document that is now labeled
2 TBF Exhibit 210?

3 MR. SCHAUBLE: Does counsel have reference to a
4 specific part of the deposition?

5 MR. EMMONS: Well, I'm going to get to that. I just
6 want to first ask the witness if he remembers having been
7 asked the question.

8 MR. SANDIFER: Yes.

9 BY MR. EMMONS:

10 Q And do you remember the answer you gave?

11 A I don't recall.

12 Q Turn to your deposition, which is the, the yellow
13 volume there, page 45, please. And starting on line 10 --
14 And, and I will tell you that the, the questions refer to the
15 document. That is, the low-power TV business plan dated
16 February 12, 1991. And starting at line 10 on page 45 of your
17 deposition there is the following question and answers.
18 "Question: Have you ever seen this before today? Answer: I
19 have seen this before today.

20 "Question: Have you ever seen it other than perhaps
21 in connection with preparing for your deposition here in this
22 case? Answer: I do not recall seeing it other than my
23 preparing for the deposition in this case." Now, I think a
24 moment ago you --

25 MR. SCHAUBLE: Your, Your Honor, I think the reading

1 should go on to line 22. I think the next question and answer
2 should also be read.

3 MR. EMMONS: That's fair. I'm sorry.

4 BY MR. EMMONS:

5 Q "Question -- " Starting line 17. "Question: So it
6 would be fair to say that -- then that you had seen this
7 document for the first time only very recently? Answer: I
8 don't recall when the first time I saw it was, but I do not
9 remember seeing it at the time of its initial preparation."
10 Now, Mr. Sandifer, does that, does that refresh your
11 recollection? I, I think you testified -- I'm not, I'm not
12 trying to trip you up or anything, I'm just trying to
13 understand what your best recollection is as to when you first
14 saw this, this low-power TV business plan.

15 You testified I think here a moment ago that you saw
16 it about the time of its preparation, February 1991. As I
17 read your deposition testimony, at the deposition you didn't
18 recall having seen it when it was originally prepared. Can
19 you give us your best recollection as you sit here today as to
20 when the first time you saw this was?

21 A Other than, yes, limiting it to the first half of
22 1991, that's as close as I can get.

23 Q But you do have a recollection of having seen it
24 then?

25 A I recall seeing it some time during the first half

1 of 1991.

2 Q Okay. Now --

3 JUDGE CHACHKIN: What's the number of the Bureau's
4 document of that? Any different?

5 MR. EMMONS: The number of the Bureau's document.
6 Just a minute. I have it, it's --

7 MR. SCHAUBLE: 509, Your Honor.

8 JUDGE CHACHKIN: 509.

9 MR. EMMONS: That's correct.

10 MR. SHOOK: And ours is a little bit different
11 because we don't have some of the corrections that appear in
12 the TBF exhibit.

13 JUDGE CHACHKIN: Well, this one is denoted as a
14 draft.

15 MR. SHOOK: Right. And we have, we have another --

16 MR. EMMONS: Your Honor, the Bureau exhibit is the
17 identical typewritten document as TBF Exhibit 210, but does
18 not contain the handwritten notations that are contained in
19 TBF 210.

20 JUDGE CHACHKIN: But who put the word in, "draft"?
21 Is that --

22 MR. EMMONS: I think, Your Honor, the testimony is
23 going to be that that was placed there by George Gardner.

24 JUDGE CHACHKIN: I'm, I'm only bringing this up
25 because the one that the Bureau put in doesn't have the word

1 "draft" on it.

2 MR. EMMONS: Correct. There were two, there were
3 two versions produced, Your Honor.

4 JUDGE CHACHKIN: Well, I, I'm just wondering if the
5 witness maybe has seen the other version. I don't know what
6 the facts are. I mean, you showed him one version. He
7 testified he saw a fax. Now, I, I don't -- I think the
8 witness's testimony that he saw -- was sent a fax of it by, by
9 Mr. Etsell.

10 MR. EMMONS: Well, let me ask you, Mr. Gardner --

11 MR. COHEN: Mr. Sandifer.

12 MR. EMMONS: I'm sorry, Mr. Sander. I told you I'd
13 do it again. I'm sorry.

14 BY MR. EMMONS:

15 Q Mr. Sandifer, looking at the, at the low-power TV
16 business plan dated February 12, 1991, do you recall receiving
17 that by fax from Mr. Etsell?

18 A What I recall is that when I produced this document
19 from my files there was a fax cover sheet on the front of it.
20 And, actually, I believe the fax was sent to George Gardner.
21 And that's, that's how I remember seeing it.

22 JUDGE CHACHKIN: There's also another difference
23 between this document and the one the Bureau has, because it
24 has financial figures. The last two pages it has the
25 construction costs. Now, is that part of the same document?